Supreme Court, U.S.
FILED
DEC 10 1993
OFFICE OF THE CLERK

No. 93-718

IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM 1993

RICHARD OLON, et al.,

Petitioners

v.

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF CORRECTIONS, et al.,

Respondents

On Petition for Certiorari to
the Supreme Court of Pennsylvania

RESPONDENTS' BRIEF IN OPPOSITION

ERNEST D. PREATE, JR.
Attorney General

BY: JOHN G. KNORR, III
Chief Deputy Attorney General
Chief, Litigation Section
Counsel of Record

Office of Attorney General
15th Fl., Strawberry Square
Harrisburg, PA 17120
(717) 783-1471

EST AVAILABLE COPY

QUESTION PRESENTED

Whether the disposition of this case by the Supreme Court of Pennsylvania was arbitrary and irrational?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED.....	i
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES.....	iii
JURISDICTIONAL STATEMENT.....	1
STATEMENT OF THE CASE.....	2
REASONS FOR DENYING THE WRIT.....	10
THE PETITION DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION	
CONCLUSION.....	16

TABLE OF AUTHORITIES

CASES	PAGE(s)
City of Harrisburg v. Capitol Housing Corp., 543 A.2d 620 (Pa.Cmwlth. Ct. 1988)	13,14
County of Venango v. Borough of Sugarcreek, Zoning Hearing Board, 626 A.2d 489 (Pa. 1993) . .	13,14,15
Department of General Services v. Ogontz Area Neighbors Association, 483 A.2d 448 (Pa. 1984) . .	passim
Palmer Oil Corp. v. Amerada Corp., 343 U.S. 390 (1952)	10
STATUTES	
28 U.S.C. § 1257(a)	1
28 U.S.C. § 1292(b)	4
1 Pa.C.S. §§ 1921-1939 . . .	6,7,8
42 Pa.C.S. § 702(b)	4
RULES AND REGULATIONS	
Fed.R.Civ.P. 12	3
OTHER	
1990 Pa. Laws 1472	2
1992 Pa. Laws ____	8

JURISDICTIONAL STATEMENT

The Court lacks jurisdiction over this case because, as we explain in the argument section of this brief, the petition does not present a substantial federal question within the meaning of 28 U.S.C. § 1257(a).

STATEMENT OF THE CASE

This is a case of state-law statutory construction, in which the only federal issue is the state supreme court's alleged failure to follow its own precedents without providing a "reasoned justification," Pet. 17, for doing so.

1. This case involves the proposed construction of a state prison in Crawford County, Pennsylvania. In Act 223 of 1990, Pennsylvania's General Assembly authorized the expenditure of about $8.9 million for "[a]cquisition and renovation of former Polish National Alliance College for use as a State Correctional Institution." 1990 Pa. Laws 1472, 1473, reprinted at Pet. App. 27a. The Pennsylvania Department of Corrections, one of the respondents, subsequently purchased the College property, and the Pennsylvania Department of General Services -- the

other respondent -- undertook its renovation. Pet. App. 2a.

The College property is in Crawford County, partly in the Borough of Cambridge Springs and partly in the Township of Cambridge. Ibid. Neither municipality's zoning ordinance would permit its use as a prison. Ibid. Petitioners, relying on these ordinances, brought this action to enjoin the conversion and use of the College property as a prison. Ibid.

2. Petitioners brought their action in Pennsylvania's Commonwealth Court, where a divided three-judge panel agreed with them that Act 223 had not been intended to supersede the local zoning ordinances. Pet. App. 9a. The panel therefore overruled the respondents' preliminary objections (the equivalent in Pennsylvania practice to a motion to dismiss under Fed. R. Civ. Proc. 12; see

Pa. R. Civ. Proc. 1028). The panel also certified, however, that its decision involved "a controlling question of law as to which there is substantial ground for difference of opinion," and that an immediate appeal would advance the ultimate disposition of the case. Pet. App. 2a; see 42 Pa. Cons. Stat. § 702(b).[1]

3. The Pennsylvania Supreme Court permitted the respondents' interlocutory appeal, Pet. App. 3a; see Pa. R. App. Proc. 1311, and reversed the Commonwealth Court. In the process, the Supreme Court discussed at length its earlier decision in Department of General Services v. Ogontz Area Neighbors Association, 483 A.2d 448 (Pa. 1984).

---

[1]The provisions of Pennsylvania law governing interlocutory appeals by permission in such circumstances are almost identical to those in 28 U.S.C. § 1292(b).

a. Ogontz, like this case, involved a state agency's attempt to establish a facility--in that case, a workshop for the mentally handicapped--not permitted by local zoning ordinances. 483 A.2d at 449-50. The Supreme Court viewed the case as requiring it to reconcile the claims of two state instrumentalities, each of which was acting under its own grant of authority from the legislature. 483 A.2d at 452. "The problem, essentially, is one of statutory interpretation." Ibid.

In ascertaining the legislature's intent, the Supreme Court repudiated its earlier view that "the grant of eminent domain power to a state agency invariably indicates legislative intent that the state agency may act without regard for local zoning regulations." 483 A.2d at 454 (emphasis added). Rather, the Supreme Court turned first to an examination of

the specific statutory language at issue and, when that had proved unhelpful, to general rules of statutory construction, which in Pennsylvania are themselves codified in statutes. 483 A.2d at 455; see, 1 Pa. Cons. Stat. §§ 1921-1939.

Applying these principles to the case at hand, the Supreme Court noted that a ruling in favor of the state agency would inevitably frustrate local zoning authority, but that the reverse was not true: "if the city were to prevail, the Commonwealth's mandate to establish mental health facilities at various locations in the state would not necessarily be frustrated, for the loss of one location might well be compensated for by substitution of another."[2] 483 A.2d at

---

[2]Petitioners repeatedly imply that the statutes involved in Ogontz identified the specific piece of property to be acquired, Pet. 7, 11, 13, but this is false. As the

455. The Supreme Court therefore held in favor of the local zoning regulations, reasoning that this "would give effect to the legislative mandates of both governmental entities." Ibid; see 1 Pa. Cons. Stat. § 1921(a)(every statute to be construed, if possible, to give effect to all provisions).

b. The Supreme Court applied the Ogontz analysis to the facts of this case, but found that it was distinguishable from Ogontz and therefore reached a different result. The key distinction was that in Ogontz, the statute had not specified the use of any particular property, and the statutory purpose--establishing a network of mental health facilities--could

---

Supreme Court noted in Ogontz, the statutes at issue there simply provided the state agency with general authorization to acquire property for a specified purpose. 483 A.2d at 452 (citing statutes).

therefore be accomplished, without offending local zoning regulations, simply by substituting another location. In this case, however, the statute did specify a particular piece of property; and the statutory purpose--establishment of a state prison on the College property--could obviously not be accomplished without contravening local zoning regulations. The Supreme Court therefore reasoned that the legislature must necessarily have intended that those regulations be superseded, and ruled accordingly. Pet. App. 5a; see 1 Pa. Cons. Stat. § 1922(1)(legislature presumed not to intend result which is absurd or impossible of execution). One Justice dissented. Pet. App. 6a.[3]

---

[3]In the meantime, the legislature had enacted Act 1992-180, 1992 Pa. Laws ____, reprinted at Pet. App. 27a-28a, which expressly superseded the local zoning

4. Petitioners sought reargument, arguing, among other things, that the "inconsistencies" in the Supreme Court's decision had deprived them of due process and equal protection. Pet. App. 18a. The Supreme Court denied reargument without comment, one Justice dissenting, Pet. App. 14a, and this petition followed.

---

ordinances involved in this case. The Supreme Court, however, did not rely on this legislation to support its holding.

REASONS FOR DENYING THE WRIT

THE PETITION DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION.

This case presents a common or garden issue of state-law statutory construction. Petitioners try to transmute it into a federal constitutional claim by arguing that, in deciding this state-law issue, the Pennsylvania Supreme Court irrationally failed to follow its own precedents, and in this way violated the Fourteenth Amendment's Due Process and Equal Protection Clauses. Petitioners' argument, however, is not merely wrong; it is so completely devoid of merit as to be frivolous, and thus it fails to present the substantial federal question necessary to support the Court's jurisdiction. See, e.g., Palmer Oil Corp. v. Amerada Corp., 343 U.S. 390 (1952).

The key Pennsylvania precedent is Department of General Services v. Ogontz Area Neighbors Association, 483 A.2d 448 (Pa. 1984). Petitioners' claim that the Pennsylvania Supreme Court irrationally failed to follow Ogontz rests upon two equally gross errors, which we discuss in turn.

1. According to petitioners, Ogontz says that local zoning regulations will never be superseded by subsequent state legislation unless there is express, explicit language to that effect; unless the legislature thus declares itself in so many words, no such intention will ever be inferred. Pet. 6, 14, 15. Ogontz, however, says nothing of the kind.

Ogontz imposes no requirements of express language or explicit language or

even "clear language"[4] in cases of this kind; Ogontz simply says that the task in these cases, as in all other cases of statutory construction, is to ascertain the legislative intent. 483 A.2d at 455. Ogontz does say that an intent to supersede local governing regulations will not "necessarily" or "invariably" be inferred from the mere grant of eminent domain power to a state agency, 483 A.2d at 454, but Ogontz declares no general ban on reasoning by inference. To the contrary, the Ogontz court itself used the

---

[4]The "clear language" phraseology, which petitioners repeatedly cite to support their argument, Pet. 5, 11, is taken outrageously out of context. This phrase appears in Ogontz only as part of a longer quotation from an earlier case. 483 A.2d at 454. There is no indication that the Ogontz court intended this fragment to stand as the holding in Ogontz itself; indeed, the discussion focusses on quite a different part of the quotation. Ibid.

standard tools of statutory construction to infer the intent of the legislature, after resort to the statutory language proved unavailing. 483 A.2d at 455.

The requirement of "express" or "explicit" language thus exists only in the petitioners' imagination; and the idea that the Pennsylvania Supreme Court irrationally departed from that "requirement" in this case, is no more than wishful thinking on their part.

2. Petitioners repeatedly insist that Ogontz and County of Venango v. Borough of Sugarcreek, Zoning Hearing Board, 626 A.2d 489 (Pa. 1993), the other case on which they rely, both involved statutes that authorized the purchase of specific property.[5] Pet. 7, 11-12, 13.

---

[5]Petitioners rely also on City of Harrisburg v. Capitol Housing Corp., 543 A.2d 620 (Pa.Cmwlth.Ct. 1988). City of Harrisburg, however, is a decision from

Thus, they argue, these cases are rationally indistinguishable from this case, which likewise concerns specific property. This, too, however, is a falsehood.

The statute in this case authorized the acquisition of the "former Polish National Alliance College." Pet. Ap. 27a. The statute in Ogontz authorized the state agency to "acquire . . . other additional facilities," see Ogontz, 483 A.2d at 452 (quoting statute). The statute in Sugarcreek authorized the acquisition of property "at the county seat or in such other places, as may be authorized by

---

Pennsylvania's Commonwealth Court, not its Supreme Court. Surely even the petitioners do not argue that the Constitution requires a State's highest court to explain its "departures" from the decisions of lower courts. In any event; the Supreme Court did discuss and distinguish City of Harrisburg. Pet. App. 4a-5a.

law." Sugarcreek, 626 A.2d at 491 (quoting statute).

This distinction -- between a general authorization to acquire property and an authorization to acquire a particular piece of property -- is thus real and, in the context of this case, crucial to a determination of legislative intent. The Supreme Court correctly reasoned that, if the legislature wanted a prison built on the site of the former College, then it must also have wanted to supersede any local regulations to the contrary. This mode of analysis is completely consistent with both Ogontz and Sugarcreek, and there is nothing irrational about it.

CONCLUSION

For these reasons, the respondents ask the Court to deny the writ of certiorari.

Respectfully submitted,

ERNEST D. PREATE, JR.
Attorney General

JOHN G. KNORR, III
Chief Deputy Attorney General
Chief, Litigation Section

Office of Attorney General
15th Fl., Strawberry Square
Harrisburg, PA 17120
717-783-1471

DATE: December 10, 1993